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**DEC 13 2006**

**OFFICE OF PETITIONS**

In re Application of Faris et al. :  
Application No. 09/809,638 : Decision on Petition  
Filing Date: March 14, 2001 :  
Attorney Docket No. 511582003500 :

This is a decision on the petitions under 37 CFR 1.47 and 37 CFR 1.183 filed September 29, 2006.

The petition under 37 CFR 1.47 is **dismissed**.

The petition under 37 CFR 1.183 is **granted**.

**The petition under 37 CFR 1.47:**

Petitioner filed a paper entitled, "Renewed Petition Under Rule 37 CFR §1.47 or Alternatively Under 37 CFR §1.183 Regarding Steve Chappell Mitchell."

Once an application has received a fully executed oath or declaration and been placed on the files for examination, the provisions of 37 CFR 1.47 no longer apply.

An executed declaration was filed August 1, 2001. All the inventors, including Steve Mitchell, signed the declaration. Therefore, treatment under 37 CFR 1.47 is inappropriate.

**The petitions under 37 CFR 1.183:**

Petitioner has filed petitions under 37 CFR 1.183 to waive the need for the signatures of two of the inventors on the 37 CFR 1.131 declaration.

37 CFR 1.131(a) states,

When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based.

Based on 37 CFR 1.131(a), the following parties may make an affidavit or declaration under 37 CFR 1.131 without need for a petition:

- (1) All the inventors of the subject matter claimed.
- (2) An affidavit or declaration by less than all named inventors of an application is accepted where it is shown that less than all named inventors of an application invented the subject matter of the claim or claims under rejection. For example, one of two joint inventors is accepted where it is shown that one of the joint inventors is the sole inventor of the claim or claims under rejection.
- (3) If a petition under 37 CFR 1.47 was granted or the application was accepted under 37 CFR 1.42 or 1.43, the affidavit or declaration may be signed by the 37 CFR 1.47 applicant or the legal representative, where appropriate.
- (4) The owner if the affidavit or declaration is being filed for a patent under reexamination.

Petitioner is unable to supply a declaration under 37 CFR 1.131(a) signed by one of the parties listed above.

The Office has stated the signature requirements can be waived in certain circumstances.

- (1) The assignee or other party in interest can sign the affidavit or declaration if none of the inventors will sign the declaration. See MPEP 714.
- (2) The affidavit or declaration can be signed by fewer than all the inventors if the other inventors are deceased, refuse to sign, or are unavailable. The affidavit or declaration must show reduction to practice or conception of the invention coupled with due diligence by the non-signing inventors.

Petitioner has satisfied requirement (2) listed immediately above. In view of the efforts recounted in the petition to obtain the signature of inventors Faris and Mitchell, it is agreed that justice would be served by waiving the requirement for their signatures on the declaration under 37 CFR 1.131. Therefore, relief under 37 CFR 1.183 is appropriate and granted.

Technology Center Art Unit 1643 will be informed the petition under 37 CFR 1.183 has been granted and the declaration under 37 CFR 1.131 has been accepted, on petition, without the signatures of two of the inventors.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



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Office of Petitions